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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 Left Field Holdings, a Florida limited liability
16 company, Left Field Holdings II, a Florida limited
17 liability company, Left Field Holdings III, a Florida
18 limited liability company, Left Field Holdings IV, a
19 Florida limited liability company, Left Field
Holdings V, a Florida limited liability company,
Left Field Holdings VI, a Florida limited liability
company, and Everfresh Endeavors, a Florida
limited liability company, on behalf of themselves
and all others similarly situated,

20 Plaintiffs,

21 v.

22 GOOGLE LLC, a Delaware limited liability
23 company.

24 Defendant.

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26 **Case No. 3:22-cv-01462**

27 **CLASS ACTION COMPLAINT**

28 **AMENDED COMPLAINT FOR
VIOLATION OF THE LANHAM
ACT**

JURY TRIAL DEMANDED

1 Plaintiffs Left Field Holdings LLC, Left Field Holdings II LLC, Left Field Holdings III LLC,
 2 Left Field Holdings IV LLC, Left Field Holdings V LLC, Left Field Holdings VI LLC, and Everfresh
 3 Endeavors LLC (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated,
 4 bring this amended complaint against Google LLC and allege as follows:

5 **I. NATURE OF ACTION**

6 1. Common law, and more recently federal law under the Lanham Act, have long
 7 recognized that businesses have a proprietary interest in their tradenames, reputations, and goodwill;
 8 and further, that businesses may not misrepresent the nature and characteristics of their businesses in
 9 commercial advertising. If it were any other way, businesses would have little incentive to build a brand
 10 name because unscrupulous second-comers could immediately steal, copy, and exploit for themselves,
 11 the good name and reputation of first-movers. This case is about Google’s disregard of these long-
 12 standing principles, and its attempt to trade-off of the goodwill, reputations, and tradenames of
 13 thousands of restaurants throughout the United States for its benefit and the restaurants’ detriment.

14 2. Consumers rarely remember a restaurant’s website, phone number, or address. So, when
 15 they want to place an order with a restaurant, they usually turn to Google—the world’s leading search
 16 engine.

17 3. Prior to 2019, when Google received a user’s search for a restaurant, Google responded
 18 with a “search engine results page” that displayed three categories of information. These categories
 19 included: (i) information particular to the restaurant the consumer was then searching for, including the
 20 restaurant’s website, phone number, and address—which Google displayed on the right-hand side of
 21 the screen; (ii) a list of “natural” search results, generated from Google’s proprietary “search
 22 algorithm”—displayed on the left-hand side of the screen; and (iii) 2-3 paid advertisements of
 23 companies wishing to promote their own websites, brands, and service offerings—which Google
 24 displayed as “Ads” just above the “natural” search results.

25 4. For much of the last decade, Google conducted itself in this usual fashion without
 26 incident; but in 2019, Google dramatically shifted its tactics, giving rise to this complaint.

27 5. Specifically, in 2019, Google modified its search engine results page to contain a large
 28 button, or link, to a “food ordering” platform that Google recently designed, developed, and released

1 into the world. Within the platform, Google created two interrelated environments. The first was a
 2 website designed to capture an actual order for the restaurant’s food items that the consumer was then
 3 looking for. Following receipt of an order, Google’s platform passed the order onto third party food-
 4 delivery company (herein, “Delivery Provider”), like Postmates Inc., for fulfillment. In another scenario
 5 (when Google did not have a relationship with a Delivery Provider willing to accept orders from its
 6 platform, Google directed the user into yet another webpage it owned and controlled. Within this second
 7 page, Google presented the user with links to third party Delivery Providers’ websites and apps. The
 8 end result of both webpages, is that Google and its partner Delivery Providers capture the consumer
 9 and order, while the restaurant gets stuck paying fees that would have been avoided had the consumer
 10 ordered directly from the restaurant.

11 6. But Google’s newly conceived platform was not, and is not, lawful. First, Google never
 12 bothered to obtain permission from the restaurants to sell their products online, and the Delivery
 13 Providers to whom Google passed orders were not (and are not) permitted, by contract, to license
 14 Google’s conduct. Second, Google purposefully designed its websites to appear to the user to be offered,
 15 sponsored, and approved by the restaurant, when they are not—a tactic, no doubt, employed by Google
 16 to increase orders and clicks within its platform. Third, Google lures consumers into its websites (to the
 17 exclusion of the restaurant’s actual website and phone number) through a classically deceptive practice,
 18 known as a “bait-and-switch.” Specifically, Google added a large “Order Online” button just below the
 19 tradename of the restaurant on its search engine results page so that consumers searching for the
 20 restaurant form the mistaken belief that the button will direct them to the restaurant, when that is not
 21 what the button delivers. Rather, it leads the consumer to Google’s new, unauthorized, and deceptively
 22 branded webpages.

23 7. At issue in the case is precisely this sort of deceptive and unfair conduct. In one scenario,
 24 Google’s “Order Online” button leads to an unauthorized online storefront—one owned and controlled
 25 by Google—wherein consumers can place orders for the restaurant’s products, all under the restaurant’s
 26 tradename. Google prominently features the restaurant’s tradename at the top of the page, above the
 27 restaurant’s address and menu, to give the user the distinct impression that the storefront, products, and
 28 services are authorized and sponsored by the restaurant, when they are not. And while it would be easy

1 for Google to label its service as “Google’s unauthorized buying service,” Google does not dare do so.
 2 It knows that its website is more likely to generate orders when cloaked in the imprimatur of the
 3 restaurant.

4 8. Upon capturing an order from its illicit storefront, Google routes the order, unbeknownst
 5 to the restaurant, to a Delivery Provider with whom the restaurant otherwise has a relationship. The
 6 Delivery Provider sends the order to the restaurant, and charges the restaurant its typical substantial fee,
 7 just as if the order originated from the Delivery Provider’s own website or mobile application (when it
 8 did not). But, as mentioned previously, Google never obtained permission from the restaurant to sell
 9 the restaurant’s products and services, or to use the restaurant’s tradename within its website. Google’s
 10 conduct damages the restaurant, because, among other reasons, had the restaurant received the order
 11 directly, it would have avoided the Delivery Provider’s fees altogether.

12 9. In yet another scenario—when Google does not have a Delivery Provider willing to
 13 accept orders captured from its illicit storefront—Google’s software causes its “Order Online” button
 14 to link into another deceptive webpage owned and controlled by Google. This second webpage includes
 15 links to competing Delivery Providers—such as Doordash, Grubhub, and Postmates—all of whom
 16 likewise attempt to capture the consumer and order within their proprietary platforms. But, like the
 17 storefront, Google deliberately misbrands the webpage so that the user forms the mistaken belief that
 18 the webpage and services are sponsored and approved by the restaurant, when nothing could be further
 19 from the truth. The restaurant never approved of Google’s website, nor agreed to sponsor any of the
 20 Delivery Providers in a dedicated webpage branded as the restaurant. The Delivery Providers, after all,
 21 are the restaurant’s competitors.

22 10. In either case, Google’s motive is simple: insert itself into a significant stream of
 23 commerce irrespective of Plaintiffs’ and class members’ proprietary rights, and then leverage its
 24 position to advance its current and future business objectives. For example, and as further described
 25 herein, Google presently uses its illicit food ordering platform to force user adoption of its nascent e-
 26 wallet service, known as Google Pay—which is the only means of payment within Google’s storefront.
 27 But, like everyone else, Google cannot directly copy and use the restaurant-class members’ hard-earned
 28 tradenames and use them in commerce without the restaurants’ approval, much less to suggest

associations and sponsorships that do not exist; nor can it engage in false advertising by misrepresenting the nature and characteristics of its own commercial activities and those of its advertisers.

11. Google’s use of Plaintiffs’ and class members’ tradenames in connection with its deceptive button and webpages violates Sections 1114 and 1125(a) of the Lanham Act—two sections of the code that make it illegal for third parties, like Google, to use in commerce exact copies, counterfeits, or replicas, of registered, and unregistered, tradenames without the consent of the trademark owner, where such use is likely to cause confusion, mistake, or deception. *See* 15 U.S.C. § 1114 (directed to registrants); and § 1125(a)(1)(A) and (B) (not limited to registrants).

12. On behalf of a nationwide class of restaurants subjected to Google's deceptive practices and misappropriation of their goodwill and tradenames in connection with Google's button and webpages, Plaintiffs bring this action to enjoin Google and to seek redress for Google's deceptive and unlawful conduct.

II. PARTIES

13. Plaintiff Left Field Holdings LLC is a Florida limited liability company which operates a Lime Fresh franchise at a restaurant located at 9005 SW 72nd Place, Miami, Fl, 33156 (“Lime Fresh Dadeland”). Lime Fresh Dadeland opened in 2010. Lime Fresh Dadeland operates under the tradenames: Lime Fresh, and Lime Fresh Mexican Grill.

14. Plaintiff Left Field Holdings II LLC is a Florida limited liability company which operates a Lime Fresh franchise at a restaurant located at 12516 SW 88th Street, Miami, Fl, 33186 (“Lime Fresh West Kendall”). Lime Fresh West Kendall opened in 2012. Lime Fresh West Kendall operates under the tradenames: Lime Fresh, and Lime Fresh Mexican Grill.

15. Plaintiff Left Field Holdings III LLC is a Florida limited liability company which operates a Lime Fresh franchise at a restaurant located at 8484 NW 36th Street, Miami, Fl, 33166 (“Lime Fresh Doral”). Lime Fresh Doral opened in 2014. Lime Fresh Doral operates under the tradenames: Lime Fresh, and Lime Fresh Mexican Grill.

16. Plaintiff Left Field Holdings IV LLC is a Florida limited liability company which operates a Lime Fresh franchise at a restaurant located at 3275 NE 1st Avenue, Miami, Fl. 33137 ("Lime

1 Fresh Midtown"). Lime Fresh Midtown opened in 2018. Lime Fresh Midtown operates under the
 2 tradenames: Lime Fresh, and Lime Fresh Mexican Grill.

3 17. Plaintiff Left Field Holdings V LLC is a Florida limited liability company which
 4 operates a Lime Fresh franchise at a restaurant located at 12000 Biscayne Blvd, Miami, Fl, 33181
 5 ("Lime Fresh North Miami"). Lime Fresh North Miami opened in 2020. Lime Fresh North Miami
 6 operates under the tradenames: Lime Fresh, and Lime Fresh Mexican Grill.

7 18. Plaintiff Left Field Holdings VI LLC is a Florida limited liability company which
 8 operates a Lime Fresh franchise at a restaurant located at 1439 Alton Road, Miami Beach, Fl, 33139
 9 ("Lime Fresh South Beach"). Lime Fresh South Beach opened in 2018. Lime Fresh South Beach
 10 operates under the tradenames: Lime Fresh, and Lime Fresh Mexican Grill.

11 19. Plaintiff Everfresh Endeavors is a Florida limited liability company which operates as
 12 the franchisor or licensor to the Left Field Holding entities identified above, with its principal place of
 13 business located at 4316 Clearbrook Lane, Kensington, MD 20895 ("Everfresh").

14 20. Plaintiffs Lime Fresh Dadeland, Lime Fresh West Kendall, Lime Fresh Doral, Lime
 15 Fresh Midtown, Lime Fresh North Miami, Lime Fresh South Beach, and Everfresh, shall be collectively
 16 referred to herein as Plaintiffs or *Lime Fresh*.

17 21. Defendant Google LLC ("Google") is a Delaware limited liability corporation with its
 18 principal place of business in Mountain View, California. Its parent, Alphabet Inc., was number 9 on
 19 the 2021 U.S. fortune 500, with 2021 revenues of over \$357 billion and net income of over \$76 billion.

20 **III. JURISDICTION AND VENUE**

21 22. This Court has federal subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338, as
 22 the action arises under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.* This Court has general jurisdiction
 23 over the defendant because it has systematic and continuous contact with this District and because its
 24 corporate principal place of business is within this District.

25 23. The Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)
 26 because this is a class action in which the amount in controversy exceeds \$5,000,000, exclusive of
 27 interest and costs; in the aggregate, there are more than 100 members in the proposed class; and at least
 28 one class member is a citizen of a state different from the defendant.

1 24. Venue is proper in this District under 28 U.S.C. § 1331(b) because the defendant resides
 2 in this district, and because the wrongful conduct giving rise to this case occurred in and/or emanated
 3 from this District. This case is a class action involving intellectual property rights and hence is subject
 4 to district-wide assignment pursuant to N.D. Cal. General Order No. 44.

5 **IV. FACTUAL ALLEGATIONS**

6 **A. Plaintiffs, the Class and Delivery Providers.**

7 25. Plaintiffs and class members make up one of the largest industries in the nation.¹ The
 8 class is comprised of restaurants located throughout the United States, all of whom have had their
 9 goodwill and tradenames misappropriated by Google as described herein. Upon information and belief,
 10 Plaintiffs and class members number in the tens of thousands. The identity of all such restaurants is
 11 known to Google and will be determined through discovery.

12 26. Plaintiffs Left Field Holdings I-VI are a collection of “fast casual” restaurants operating
 13 in Florida under the “Lime Fresh Mexican Grill” tradename. Although each Left Field Holdings entity
 14 is a different physical restaurant and a separate legal entity, all are under common ownership and
 15 management. In their most recent fiscal year, Plaintiffs, Left Field Holdings I-VI, collectively generated
 16 over \$11 million in revenue.

17 27. Plaintiff Everfresh is the franchisor or licensor to Left Field Holdings franchisees.
 18 Everfresh is the registered and rightful owner of the trademark: “Lime Fresh Mexican Grill,” under U.S.
 19 Reg. No. 3,054,007; attached hereto as Exhibit C.

20 28. Plaintiffs and class members offer their food products for on-premises dining, take-out,
 21 and/or delivery. Generally, takeout and delivery orders may be placed on a restaurant’s website and/or
 22 mobile application, but they may also be placed by phone, text, or in-person.

23 29. In addition to these conventional sources of delivery and take-out orders, many Plaintiffs
 24 and class members signed agreements with various authorized Delivery Providers.

25
 26
 27 ¹ Restaurants account for nearly 11 million jobs in the U.S. and 4% of GDP. See Charles Lew, *As
 Restaurants Go, So Goes The Economy*, (Apr. 20, 2020)
<https://www.forbes.com/sites/forbesbusinesscouncil/2020/04/20/as-restaurants-go-so-goes-the-economy/?sh=177c298c40cc> (last visited Jun. 30, 2021).

1 30. Delivery Providers typically provide two interrelated services: First, they offer
 2 proprietary, independently branded websites and mobile applications (collectively, “platforms”) that
 3 allow consumers to place delivery and take-out orders with restaurants made available within their
 4 platforms. Second, the Delivery Providers offer scheduling and mapping technologies (usually within
 5 a proprietary app) to connect and route delivery drivers to consumers requesting delivery services for
 6 orders placed within the Delivery Providers’ websites and apps.

7 31. In addition to the above-mentioned platforms and technologies, Delivery Providers often
 8 provide contracting restaurants additional tools and services so that the Delivery Provider may
 9 efficiently communicate orders received from their platforms in real-time to contracting restaurants.
 10 These additional tools and services are usually made available to contracting restaurants via a
 11 designated tablet or web interface.

12 32. Before making a restaurant available within their platforms, most Delivery Providers
 13 first approach the restaurant to obtain their approval; and upon doing so, enter into a form merchant
 14 agreement with the restaurant. But not all Delivery Providers do so. Some Delivery Providers are known
 15 to include restaurants within their platforms without first approaching the restaurants for their approval.
 16 This activity has been the subject of several lawsuits, as well as state legislative changes.²

17 33. A restaurant’s motivation to partner with a Delivery Provider is almost never to make a
 18 profit on orders received from the Delivery Provider—Delivery Providers’ fees are simply too high,
 19 often exceeding 25% of the price of an order. Rather, a restaurant’s usual goal is to capture new
 20 customers that may later place orders with the restaurant outside of the Delivery Providers’ expensive
 21 platforms. But, as this complaint alleges, Google’s illicit button and webpages prevent these more
 22 profitable orders from materializing.

25 ² See *Lynn Scott, LLC v. Grubhub Inc.*, No. 1:20-cv-06334 (N.D. Ill. Mar. 22, 2021); see also
 26 *City of Chicago v. DoorDash, Inc. and Caviar, LLC*, No. 2021CH04328 (Cir. Ct. Cook Cty. Ill. Aug.
 27 27, 2021); *City of Chicago v. Grubhub Holdings, Inc. and Grubhub Inc.*, No. 2021CH04327 (Cir. Ct.
 28 Cook Cty. Ill. Aug. 27, 2021); see also Cal. Bus. & Prof. Code § 22599 (eff. Jan. 1, 2021) (prohibiting
 a food delivery platform from arranging for the delivery of an order from a food facility without first
 obtaining an agreement with the food facility).

1 34. Delivery Providers are expensive. For example, the Delivery Provider Postmates (now
 2 owned by Uber Eats) charges contracting restaurants between 6%-30% of each order.³ These fees are
 3 substantial relative to the typical profit margin within the restaurant industry. Accordingly, Plaintiffs
 4 and class members make little (if any) profit on orders received from authorized Delivery Providers.

5 35. To avoid these fees, Plaintiffs and class members vastly prefer to capture orders directly
 6 through their own order-taking websites and apps, over the phone, or in-person. By doing so, Plaintiffs
 7 and class members do not incur the 6-30% fee typically charged by the Delivery Providers.

8 36. Capturing an order via a restaurant's website or app not only saves the restaurant money
 9 (because the restaurant avoids the Delivery Providers' fees), but also often fosters better customer
 10 relationships. Through their own custom websites and apps, restaurants may offer customer loyalty
 11 rewards and promotional programs—programs that drive increased customer engagement, and higher
 12 revenues and profits for the restaurants. Orders placed directly with restaurants also allow restaurants
 13 to maintain more control over the entire customer experience from order through delivery/pickup,
 14 ensuring a more seamless, accountable, and enjoyable consumer experience.

15 37. Consumers too prefer to order directly with restaurants whenever possible. Numerous
 16 consumer surveys demonstrate that when faced with an option, consumers prefer placing orders directly
 17 with a restaurant, rather than through third-party apps and websites (such as those offered by Delivery
 18 Providers).⁴

19 38. Plaintiffs, like many class members, maintain a branded order-taking website at
 20 www.limefresh.com, where consumers can place delivery and take-out orders directly with Lime Fresh
 21 restaurants. All orders placed by consumers on the Lime Fresh website are routed to the specific Lime
 22 Fresh restaurant selected by the consumer upon check-out, and all revenues received for each order
 23 flow to the designated restaurant. For take-out orders, the customer picks-up the order directly from the
 24 restaurant, and the ordering process is costless to the restaurant. For orders requiring delivery, Plaintiffs

25
 26
 27 3 See 5/18/2022 Uber agreement attached as Exhibit B.
 28 4 See, e.g., poppinpay, <https://poppinpay.com/10-staggering-statistics-about-mobile-order-ahead-for-restaurants/> (last visited Jun. 30, 2022); statista, <https://www.statista.com/statistics/1170545/us-consumers-direct-vs-third-party-food-delivery-online-orders-coronavirus/> (last visited Jun. 30, 2022).

1 entered into an agreement with a delivery service (DoorDash) on a fixed-fee basis at a fraction of the
 2 net-cost of the typical fee charged by Delivery Providers for the same order.⁵

3 39. To increase brand awareness and encourage consumer demand, Plaintiffs and class
 4 members engage in advertising and marketing. In 2020, quick-service restaurants alone spent an
 5 estimated \$4 billion on advertising.⁶ These advertising expenditures contribute to the reputations and
 6 goodwill of Plaintiffs and class members—which is captured by their tradenames.

7 40. While consumers will remember a restaurant's tradename, products, and services, they
 8 rarely remember a restaurant's phone number, address, or website URL. For that information,
 9 consumers today typically turn to an internet search engine; and that search engine is usually Google.

10 41. However, beginning in 2019, when a consumer searched for a particular restaurant using
 11 Google's search engine and/or mapping interface, Google began intentionally misdirecting the
 12 consumer away from the restaurant's own website, physical address, and phone number, and into one
 13 of two different websites owned and controlled by Google. These websites are deceptively branded as
 14 being offered, sponsored, or approved by Plaintiffs and class members, when, they are not. Additionally,
 15 the method Google employs to induce consumers to enter into its websites is also deceptive and unfair.
 16 The particulars of Google's illegal and deceptive conduct are described in detail in the following
 17 sections.

18 **B. Google's illegal use of Plaintiffs' and the class's tradenames.**

19 42. Google is the world's largest search engine. It maintains a whopping 90% market-share
 20 globally of all internet searches.⁷ Within the United States, Google's market-share is only slightly less,
 21 maintaining an 87% share of all searches, including an 80% share of searches conducted on desktops,

22
 23 ⁵ For each delivery order from Lime Fresh's website, Plaintiffs pay their designated delivery
 24 service (*i.e.* DoorDash) a net fee of approximately \$2 per order, versus \$4-6 per order as charged by the
 25 typical Delivery Provider (20-30% of a typical \$20.00 order is \$4-6 per delivery order). For each take-
 26 out order, no fee is charged to Plaintiffs from the Lime Fresh's website; versus a fee of \$1.20-4 for
 27 similar orders processed by the typical Delivery Providers (6-20% fee of a typical \$20.00 order is \$1.20-
 28 4 per take-out order).

⁶ *Going Mobile: QSR Ad Spend To Grow By \$134 Million in 2020*, Inside Radio (Jan. 28, 2020),
http://www.insideradio.com/free/going-mobile-qsr-ad-spend-to-grow-by-134-million-in-2020/article_a86f1146-3c22-11ea-85c6-7b3ddbe1f6a4.html (last visited Jun. 30, 2022).

⁷ StatCounter, <https://gs.statcounter.com/search-engine-market-share/mobile/united-states-of-america#monthly-200901-202111> (last visited Jun. 30, 2022)

1 and a 94% share of searches conducted on mobile devices. Put simply, Google dominates the search
 2 engine market; and, thus, when someone wants to look up the phone number or website of a restaurant
 3 to order food, a Google search is virtually inevitable.

43. At www.google.com, a user can enter a search term or phrase into a text field.

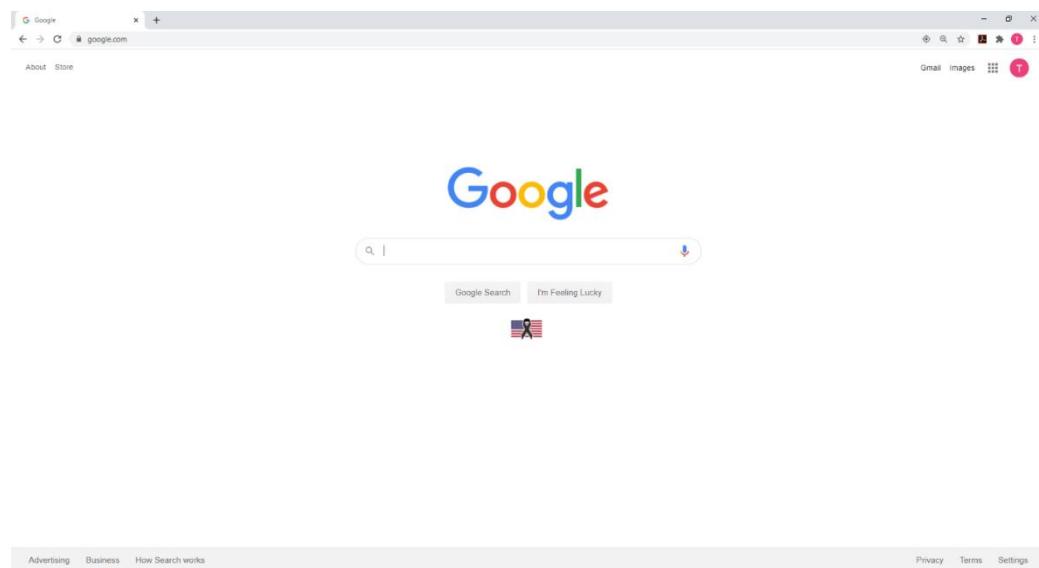


Figure 1: Google's Search Engine and Search Text Field. (Captured approximately 1/10/2021)

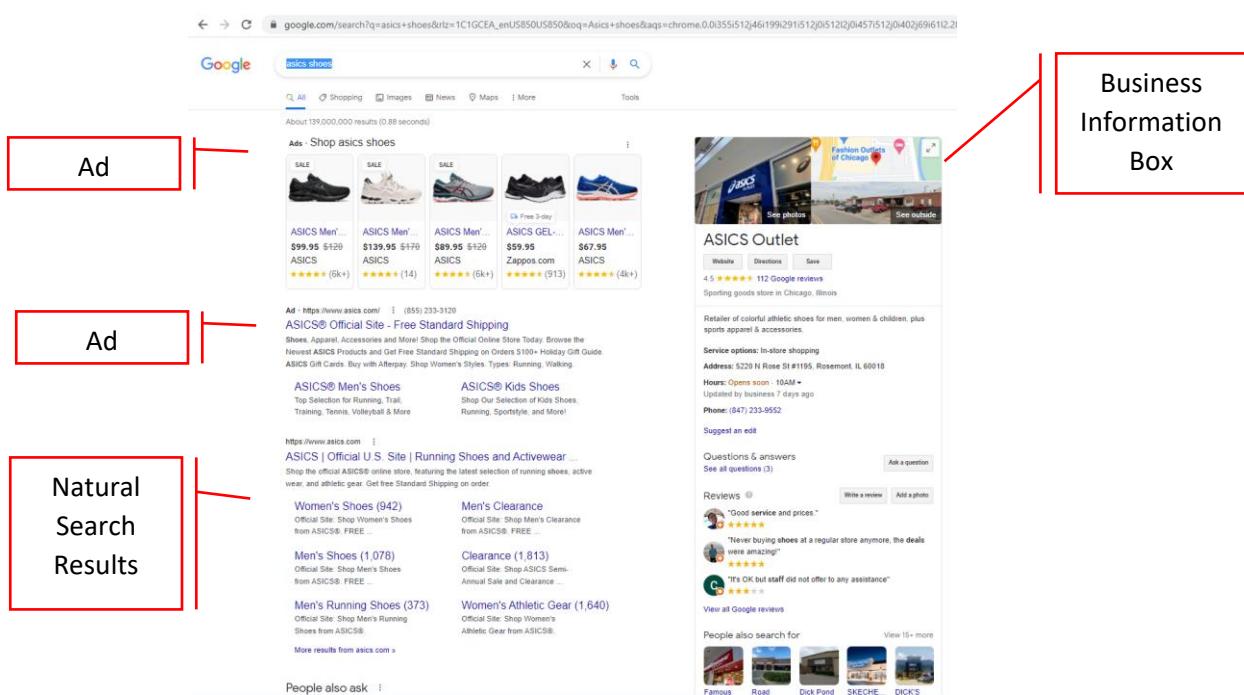
44. Upon a user submitting a search term or phrase, Google uses proprietary technology to search an index of websites available on the world-wide-web for relevant and responsive results before presenting the results to the user in what is often referred to as a “search engine results page” (herein referred to as the “SERP”).

45. The SERP is a webpage designed, developed, and hosted by Google. Depending on the search term or phrase entered by the user, Google may present different SERP configurations to the searching-user. Typically, however, the SERP is comprised of two sections, with a third section displayed once Google determines the user is searching for a particular business. The first section is a list of “natural,” non-paid, responsive search results. This list is generated by Google’s proprietary “search algorithm,” and is typically presented to the user on the left-hand side of the user’s browser window.

46. The second section is a list of paid advertisements responsive to the user’s search term or phrase, generated by yet another one of Google’s proprietary algorithms. This algorithm takes

1 account of the amounts competing businesses “bid” to have their business and website featured as an
 2 advertisement just above the “natural,” non-paid, search results for the particular search term or phrase
 3 (a/k/a, a “keyword”). To minimize consumer confusion, Google’s usual practice is to identify each
 4 advertisement placed within this section as an “Ad.”

5 47. The third section, referred to herein as a “Business Information Box,” is a section that
 6 only appears under certain conditions—when Google determines that the user is searching for a
 7



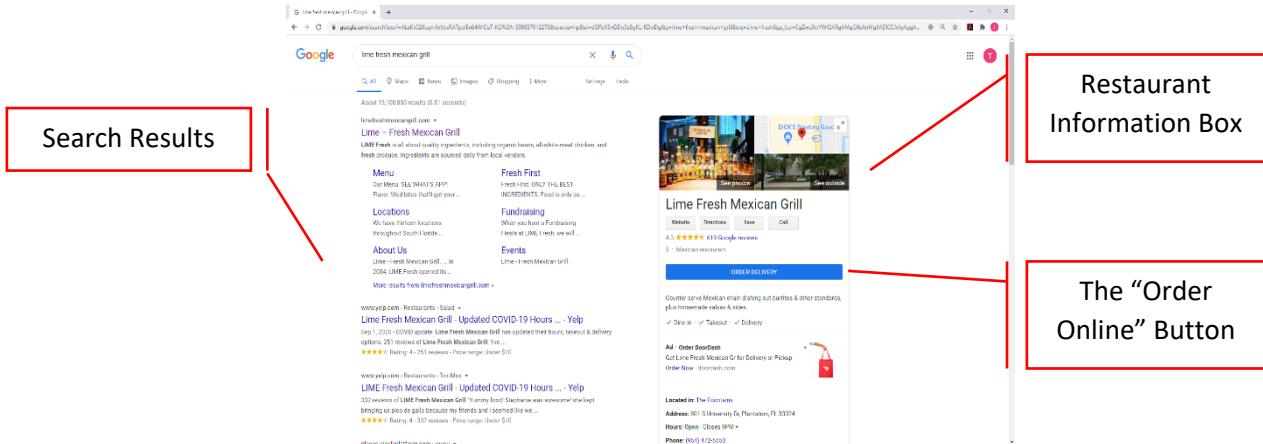
18 Figure 2: Exemplar of SERP showing “Ads,” Natural Search Results, and Business Information Box. (Captured approximately
 19 1/10/2021)

20 particular business. This section appears on the right-hand side of the user’s screen. Within the Business
 21 Information Box, Google displays information particular to the business that Google determines the
 22 user is likely searching for, including: the business’ tradename, address, hours of operation, phone
 23 number, and links to the business’ website, and directions.

24 48. At issue in this complaint is a change Google recently implemented (in 2019) with
 25 respect to the SERP and the Business Information Box that Google presents to users following a user’s
 26 search for a specific restaurant. For purposes of this complaint, the Business Information Box pertinent
 27 to the restaurant industry is referred to herein as the “Restaurant Information Box.”

28 49. Specifically, beginning in 2019, when a user searched for a restaurant, Google began

1 presenting the consumer with a Restaurant Information Box that not only included information
 2 particular to the restaurant the user was then searching for, but also a large blue button entitled “Order
 3 Online,” that Google placed just below the restaurant’s tradename.⁸



11 *Figure 3: Google’s SERP and Restaurant Information Box (Captured approximately 9/4/2020)*

12 50. When the same search is performed on a mobile device (or a smaller screen), the
 13 “Restaurant Information Box” is presented to the user in-line with the search results, rather than on the
 14 right-hand-side of the users’ browser window. Exhibit A provides an exemplar of the mobile
 15 experience. As reflected therein, the features of the mobile experience are substantially similar to the
 16 desktop experience highlighted in the screenshots shown throughout the complaint.

17 51. The Restaurant Information Box was invented, designed, and developed by Google and
 18 is hosted by Google.

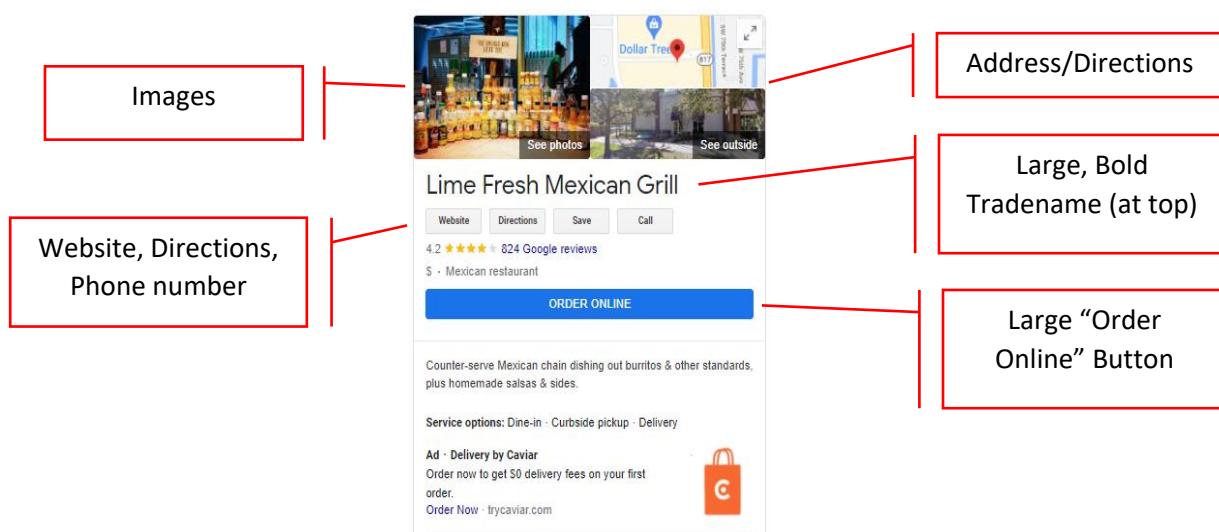
19 52. The Restaurant Information Box is consistent in design, components, and features, as
 20 alleged herein, for each restaurant within the class.

24 8 Upon information and belief, Google presents the Restaurant Information Box in response to
 other user queries. For example, if a user searches for “nearby restaurants” within Google’s search
 25 engine (at <https://www.google.com>) or mapping service (at <https://www.google.com/maps>), the results
 26 page will show a list of nearby restaurants along with a map displaying the location of each restaurant
 27 within a designated geographic area along with a list of the restaurants within the map on the left-hand
 28 side of the screen. When users click on a particular restaurant location within the map, or upon a
 particular restaurant within the list, they are presented with the Restaurant Information Box (or a slight
 variation thereof). Plaintiffs will ascertain all available means Google employs to direct users to the
 Restaurant Information Box, and/or its illicit Storefront and Landing Page when conducting discovery.

1 53. The Restaurant Information Box presents consumers with information pertinent to the
 2 restaurant Google identifies as matching the searched term or phrase entered by the consumer within
 3 Google's search field.

4 54. Along with other information, the Restaurant Information Box prominently displays
 5 images of the restaurant; the restaurant's tradename, address, hours of operation, and phone number; as
 6 well a series of buttons (or links) that allow the consumer to: "Call" the restaurant, obtain "Directions"
 7 to the restaurant, or access the restaurant's "Website."

8 55. As mentioned previously, beginning in 2019, Google began placing a large blue button
 9 entitled: "Order Online" within the Restaurant Information Box, directly underneath the restaurant's
 10 tradename. Google has also labeled its deceptively placed button, "Order Delivery," and/or "Order
 11 Pickup." Plaintiffs will ascertain the various buttons used by Google to direct users into its deceptively
 12 branded websites upon discovery.



22 Figure 4: Google's Restaurant Information Box (Captured approximately 11/9/2021)

23 56. The "Order Online" button within the Restaurant Information Box was invented,
 24 designed, and developed by Google and is hosted by Google.

25 57. Google placed the "Order Online" button within the Restaurant Information Box for
 26 each Plaintiff and class member without their consent.

1 58. Google purposefully placed the “Order Online” button just below the restaurant’s
 2 tradename to lead consumers to believe the button was sponsored, or approved, by the restaurant, when
 3 it is not; and to induce a greater number of clicks.

4 59. Google also purposefully designed the “Order Online” button to be larger, brighter, and
 5 more visible than other buttons or links with the Restaurant Information Box, including the buttons
 6 entitled “Website,” “Directions,” and “Call” (all of which directly connect the consumer to the
 7 restaurant), so that consumers would also believe the button to be sponsored, or approved, by the
 8 restaurant, when it is not; and to induce a greater number of clicks.

9 60. In fact, consumers are likely to (and do) believe that the “Order Online” button is
 10 sponsored, or approved, by the restaurant whose tradename (and other identifying indicia) is displayed
 11 within the Restaurant Information Box.

12 61. Upon information and belief, since its release, the “Order Online” button has garnered
 13 more clicks than any other button or link within the Restaurant Information Box, or more generally
 14 within the broader SERP.

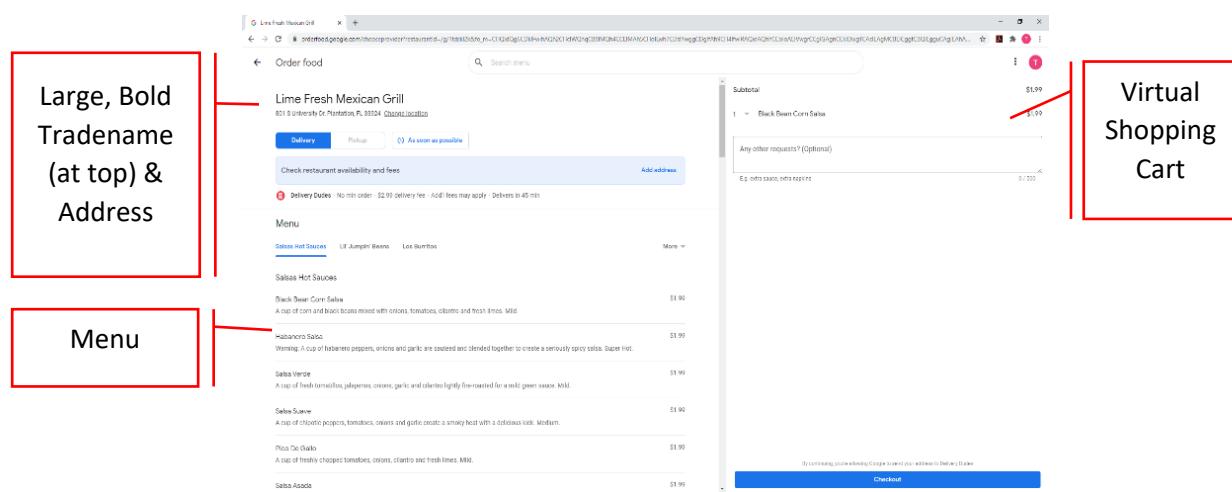
15 62. Google does not disclose to the searching consumer that the “Order Online” button is
 16 not sponsored, or approved, by the restaurant whose tradename is prominently featured just above the
 17 button.

18 63. When a consumer clicks the “Order Online” button in the Restaurant Information Box,
 19 the consumer is directed to one of two different webpages, depending on different preconditions. These
 20 webpages are described in the following sections and are referred to, respectively, as “Google’s Online
 21 Storefront” and “Google’s Landing Page.”

22 64. Significantly, Google deliberately designed these webpages to also be confusing,
 23 prominently labeling each of the webpages with Plaintiffs’ and class members’ tradenames without
 24 their approval, in violation of Section 43(a) of the Lanham Act. These violations are in addition to the
 25 initial interest confusion caused by Google’s deceptive “Order Online” button (described above).

1 **C. Scenario 1: Google's Online Storefront.**

2 65. The first webpage, referred to herein as “Google’s Online Storefront” (or “Storefront”),
 3 is a virtual storefront, whereby consumers can place orders for the restaurant’s food items, all under the
 4 restaurant’s tradename. But Google never obtained the restaurant’s consent to set-up the Storefront, or
 5 to use the restaurant’s tradename.



14 Figure 5: Google’s Online Storefront landing page Component Parts (Captured approximately 9/4/2020)

15 66. The Storefront, like the Restaurant Information Box, is substantially similar in design,
 16 componentry, and features, for all Plaintiffs and class members.

17 67. The Storefront was invented, designed, and developed by Google and is hosted by
 18 Google.

19 68. The Storefront prominently displays the restaurant’s tradename at the top of the website,
 20 above the restaurant’s address, and menu.

21 69. Within Google’s Storefront, a consumer can electronically select and add food items
 22 from the restaurant’s menu to a virtual shopping cart. *See Figure 7, below.*

23 70. Once a consumer has finished adding items to his virtual shopping cart, the consumer
 24 can electronically “check-out” of the Storefront by entering and submitting payment information.

Screenshots of Google's Storefront

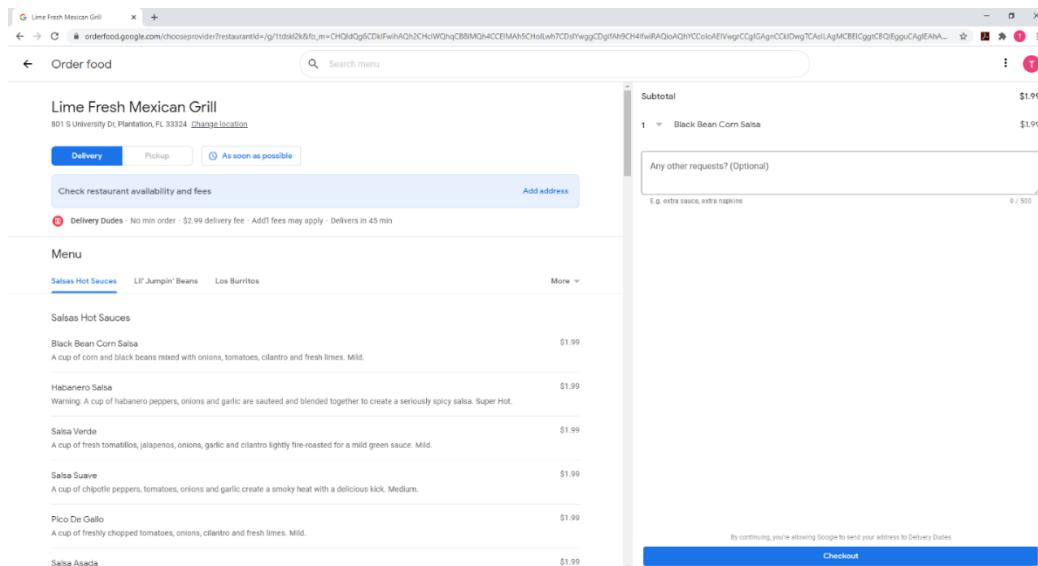


Figure 6: Google's Storefront Prominently Displays Tradename of Restaurant (Captured approximately 9/4/2020)

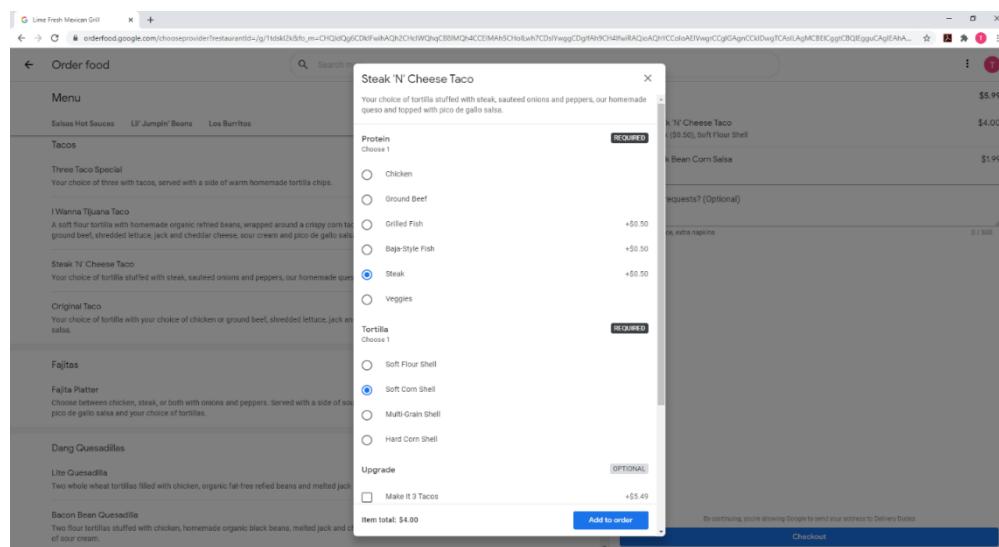


Figure 7: Google's Storefront Add Menu Item Process (Captured approximately 9/4/2020)

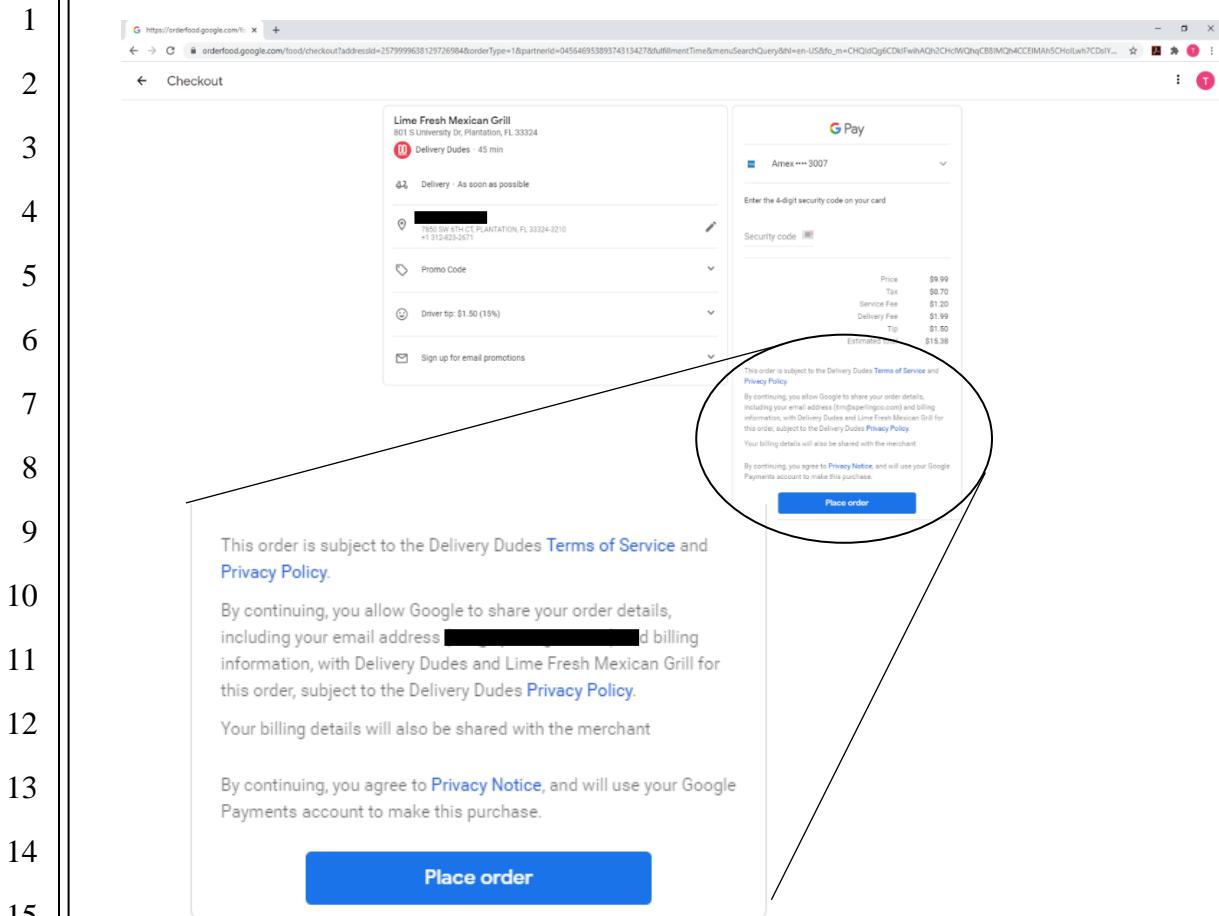


Figure 8: Google's Storefront Check-out Process (Captured approximately 9/4/2020)

71. To process orders captured from its unauthorized Storefront, and unbeknownst to the restaurant, Google contracts with one or more Delivery Providers with whom the restaurant has an existing contractual relationship.⁹

72. Upon receiving a customer order within the Storefront, Google sends the order to the Delivery Provider with whom it has contracted (and if Google has contracted with multiple Delivery Providers for a particular restaurant, then to the Delivery Provider selected by the user). The receiving Delivery Provider then: (i) routes the order to the restaurant just as if the order originated from the receiving Delivery Provider's proprietary platforms; and (ii) charges the restaurant the same exorbitant

⁹ Google may also route orders from its illicit Storefront to Delivery Providers that have no contractual relationship with the restaurant. To whom, and under what conditions, Google routes its illicit orders will be determined upon discovery. Regardless of these conditions, in each case, Google never had a license to use the Restaurant's tradenames, or permission to sell its menu items.

1 fees for the order (typically in the range of 6-30% of the total price of each order), all without the
 2 restaurant having any idea that the order originated from Google's illicit Storefront.

3 73. Google never obtained authorization or permission from Plaintiffs and class members to
 4 capture orders for Plaintiffs' and class members' food products under their tradenames.

5 74. Google never obtained authorization or permission from Plaintiffs and class members to
 6 hold itself out to the public as Plaintiffs' and class members' businesses.

7 75. Google is not an authorized franchisee or distributor of the Plaintiffs' and class
 8 members' restaurants.

9 76. Just as Google may not open and operate physical storefronts under the Plaintiffs' and
 10 class members' tradenames selling their products without their approval, it may not open and operate
 11 virtual storefronts doing the same thing.

12 77. Google purposefully designed the Storefront, with Plaintiffs' and class members'
 13 tradenames prominently featured at the top of the website, to lead consumers to believe the Storefront
 14 is authorized, sponsored, or approved, by the restaurant, even though it is not.

15 78. In fact, consumers are likely to (and do) believe the Storefront is authorized, sponsored,
 16 or approved, by the restaurant whose tradename is displayed atop the webpage—and particularly when
 17 viewed in combination with the preceding confusingly placed "Order Online" button.

18 79. Google's Storefront competes for the same consumers as do Plaintiffs' and class
 19 members' businesses.

20 80. Google's Storefront sells Plaintiffs' and class members' own menu items.

21 81. Google's Storefront prominently displays the exact same tradenames as Plaintiffs' and
 22 class members' tradenames.

23 82. Like the "Order Online" button within the Restaurant Information Box, nowhere within
 24 the Storefront does Google advise consumers that it is not authorized by the restaurant whose tradename
 25 it prominently displays.

26 83. Worse, Google knew that its Storefront was likely to cause consumer confusion, and yet
 27 it nevertheless released it to the public despite this knowledge.

1 84. By Google's own admission (and as further alleged in paragraphs 85-88), Google
 2 intentionally designed the Storefront, in the first instance, to appear to consumers to be "built by the
 3 restaurant."

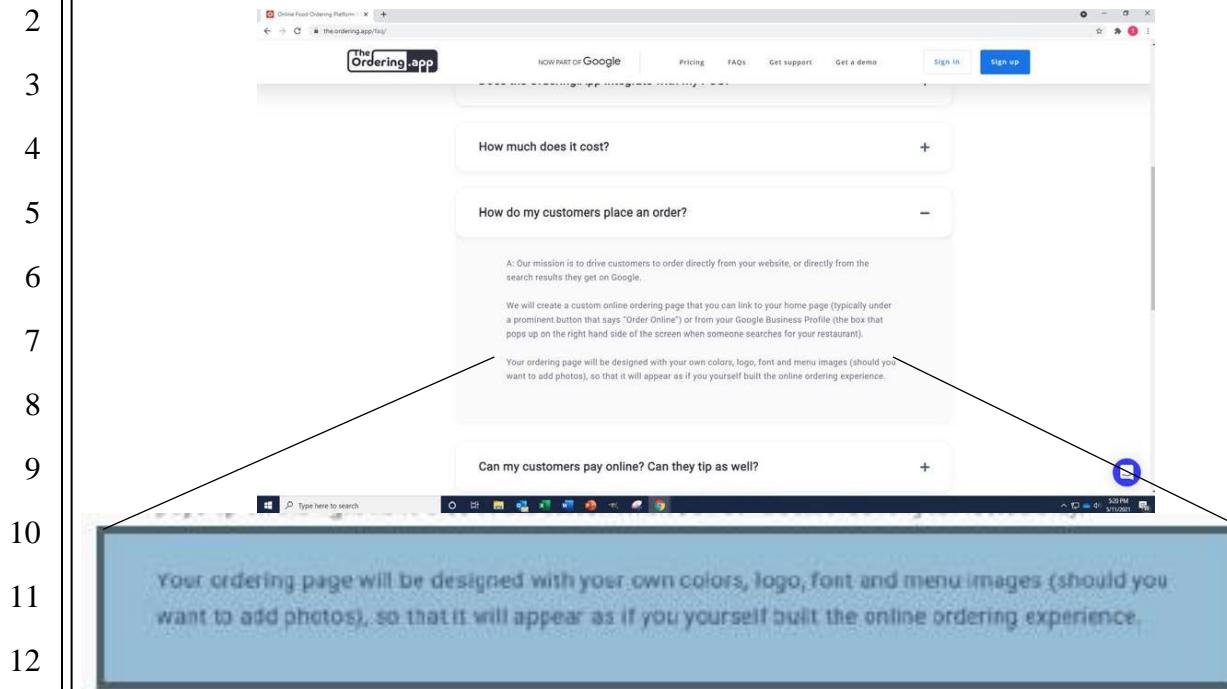
4 85. Upon information and belief, Google originally planned to market the Storefront directly
 5 to restaurants (rather than to competing Delivery Providers) using a website at <https://the.ordering.app>.

6 86. At <https://the.ordering.app>, Google touted the benefits and features of its Storefront and
 7 invited restaurants to contact Google to become users of the service-offering. Upon information and
 8 belief, Google's efforts to market the service-offering directly to restaurants failed; and so Google
 9 "pivoted" and decided to market the Storefront to Delivery Providers instead.

10 87. Google apparently did not care that the Delivery Providers were not authorized, under
 11 their agreements with the restaurants, to set up websites under the restaurants' tradenames outside of
 12 their proprietary platforms, much less authorized to pass that right onto third parties, like Google. Once
 13 Google decided to contract with Delivery Providers rather than with the restaurants directly, Google
 14 had no reason to market its Storefront directly to the restaurants and so it removed its website at
 15 <https://the.ordering.app> from the internet in its entirety (sometime in late 2021).

16 88. Critically, however, Google acknowledged within the website at <https://the.ordering.app>
 17 that it designed the Storefront to appear to consumers to be built by the restaurant whose name was
 18 featured at the top of the website. Thus, Google knew that its illegal Storefront, if released to the public,
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1 would likely cause consumer confusion.



13 *Figure 9: Google’s Website Advertising Storefront Capabilities to Restaurants at https://the.ordering.app (Captured approximately
5/11/2021)*

14 89. Google’s own advertising practices further confirm that Google knew its “Order Online”
15 button and linked webpages were likely to cause consumer confusion. As mentioned previously,
16 Google’s usual practice is to label advertisements placed within its SERP as advertisements (by placing
17 an “Ad” label besides each advertisement). *See, e.g., Figure 2, above.* But its “Order Online” button is
18 not given such label.

19 90. Google’s prior litigation history likewise confirms that it knows its button and
20 unapproved webpages are illegal and inappropriate. In 2018, but a year before launching the platform
21 at issue in this complaint, Google sued Kydia, Inc., d/b/a Beyond Menu, for engaging in much the same
22 conduct Plaintiffs now allege against Google. *See Google LLC v. Kydia Inc. D/B/A Beyond Menu*, Case
23 No 5:18-cv-03047 (N.D. Cal., May 2018). Within its suit, Google alleged Beyond Menu devised a
24 “scheme” to “seize” control of restaurants’ Information Boxes for the purpose of inserting a link to
25 Beyond Menu’s ordering website, so that consumers searching for the restaurant would be diverted
26 away from the restaurants’ “official” website and into a Beyond Menu’s website, thereby increasing

1 Beyond Menu's fees and commissions. Upon information and belief, Google settled its lawsuit against
 2 Beyond Menu shortly after it launched the platform at issue herein.

3 91. Google's precise business justification for its Storefront is unknown. However,
 4 minimally, Google derives significant value and benefit from unauthorized Storefront, by forcing all
 5 consumers ordering food within the platform to register and pay for the items using Google Pay (herein
 6 referred to as "GPay").

7 92. GPay is a digital wallet (or e-wallet) platform and online payment system developed by
 8 Google to power in-app, online, and in-person contactless purchases on mobile devices.

9 93. GPay competes with Apple Pay and Samsung Pay. At the time Google launched the
 10 Storefront, GPay's user-base substantially lagged-behind the user-base of Apple's comparable Apple
 11 Pay service. Upon information and belief, Google's illicit Storefront provided Google with a means to
 12 reach (and potentially covert) millions of restaurant customers into new GPay users.

13 94. Plaintiffs will ascertain the precise number of new GPay users obtained by Google due
 14 to its illicit Storefront, as well as the value Google assigns to such users, through discovery.

15 95. Upon information and belief, Google likely derives other value and benefit from its
 16 Storefront, including by: (1) driving increased user engagement of its search engine (and related
 17 advertising business); (2) using information obtained from its Storefront to inform its immensely
 18 profitable advertising business; and/or (3) capturing value (or consideration) from Delivery Providers
 19 with whom it originally "partnered" when launching the service.¹⁰

20 96. The precise value and benefit captured by Google from its unauthorized button and
 21 Storefront will be determined through discovery.

22 97. Google's unauthorized use of Plaintiffs' and class members' tradenames has
 23 proximately caused Plaintiffs and class members damages.

24 98. Had Google not illegally diverted consumers into its Storefront, a substantial portion of
 25 consumers searching for Plaintiffs' and class members' restaurants would have placed orders directly
 26 with the restaurants (either in-person, over the phone, or through the restaurants' own order-taking

27¹⁰ See, e.g., [https://postmates.com/blog/google-it-then-postmate-it-order-via-google-search-](https://postmates.com/blog/google-it-then-postmate-it-order-via-google-search-maps-google-assistant/)
 28 maps-google-assistant/ (last visited, Jun. 28, 2022), wherein Postmates claims within a blog posting
 that it "partnered" with Google.

1 websites or apps). In that event, Plaintiffs and class members would have avoided the fees charged by
 2 the Delivery Providers to whom Google routed its illicit orders.

3 99. From January 2020 through August 2020, in connection with Plaintiffs' six restaurants,
 4 Google intercepted over 1,000 delivery and take-out orders from customers with its unauthorized and
 5 deceptive button and Storefront, many of whom would have otherwise ordered from Plaintiffs'
 6 restaurants directly. Of those orders, approximately nine out of ten orders were take-out orders, while
 7 one out of ten were delivery orders.

8 100. Upon information and belief, since launching its unauthorized Storefront, Google has
 9 hijacked millions of customers and orders from Plaintiffs and class members.

10 101. Google's unauthorized and deceptive use of Plaintiffs' and class members' tradenames
 11 has also caused Plaintiffs and class members additional irreparable harm by: (a) damaging and diluting
 12 their respective reputations, goodwill, and tradenames by associating Plaintiffs and class members with
 13 an ordering website that by all appearances is offered by the restaurant, but that the restaurant does not
 14 own or control; and (b) by depriving Plaintiffs and class members of the value of direct customer
 15 relationships that would have produced an indeterminate amount of business, revenue, and profits for
 16 the restaurants in the years to come.

17 **D. Scenario 2: Google's Landing Page.**

18 102. As previously mentioned, there is another webpage that Google displays following a
 19 user clicking on the "Order Online" button, depending on a different set of preconditions than those
 20 mentioned previously. This second webpage, referred to herein as "Google's Landing Page," presents
 21 itself to the user when, upon information and belief, Google does not have a Delivery Provider signed-
 22 up to receive and process orders from its unauthorized Storefront. But just like the Storefront, this page
 23 too makes unauthorized and deceptive use of Plaintiffs' and class members' tradenames.

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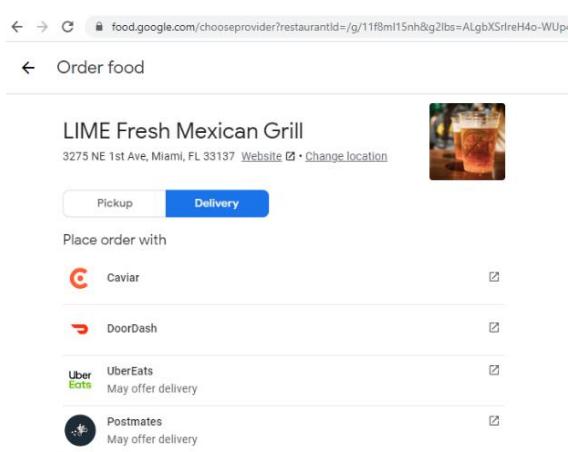


Figure 10: Google's Landing webpage (Captured approximately 11/2/2021)

103. The Google Landing Page is substantially similar in design, componentry, and features
11 for all Plaintiffs and class members.

12 104. The Landing Page, like the Storefront, was invented, designed, and developed by Google
13 and is hosted by Google.

14 105. The Landing Page prominently displays the same tradename, address, and images of the
15 restaurant whose tradename was atop the preceding Restaurant Information Box.

16 106. On the Landing Page, just below the restaurant's tradename and address, Google lists a
17 series of Delivery Providers.

18 107. Within the Landing Page, users may click on any one or more of the listed Delivery
19 Providers; and upon doing so, the user is directed (or linked) to the Delivery Provider's website.

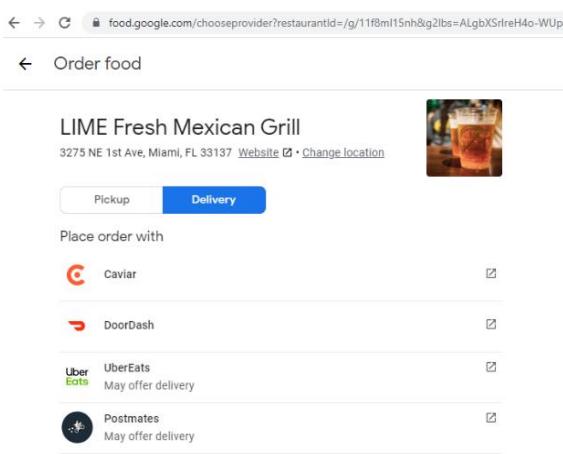
20 108. Google never obtained Plaintiffs' and class members' consent to create and display such
21 a Landing Page, or to use Plaintiffs' or class members' tradenames within the webpage.

22 109. Google does not disclose to consumers that the Landing Page is presented without the
23 authorization or approval of Plaintiffs and class members.

24 110. Google's Landing Page and preceding "Order Online" button, are likely to, and in fact
25 do create consumer confusion because:

- 26 a. They give the user the impression that the restaurant authorized, sponsored,
27 and approved of Google's button and Landing Page, when, in fact, the
28 restaurant never provided Google (or anyone else) with such approval;

1 b. They give the user the impression that the restaurant sponsors, stands behind,
 2 or controls, each of the Delivery Providers' services that are identified
 3 directly below its tradename, when the restaurant does not; and
 4 c. They give the user the impression that the restaurant accepts orders from each
 5 Delivery Provider within the Landing Page, when in fact the restaurant may
 6 have no relationship whatsoever with some of the Delivery Providers listed
 7 within Google's unauthorized Landing Page. For example, Plaintiffs do not
 8 have a relationship with Caviar, a company identified at the top of Google's
 9 list.



17 *Figure 11: Google Landing Page displays Caviar with whom Lime Fresh has no relationship (Captured approximately 11/2/2021)*

18 111. Just as Google derives value and benefit from its illicit Storefront, so too does Google
 19 generate value and benefit from its unauthorized Landing Page. Among other benefits, Google's
 20 Landing Page provides an inducement for consumers to continue to return to its illegal Storefront in the
 21 future; and more generally, for consumers to return to Google's immensely profitable search engine
 22 and advertising business. Upon information and belief, Google also uses the information generated from
 23 its Landing Page to inform its advertising business. The precise value and benefit obtained by Google
 24 due to its Landing Page will be ascertained upon discovery.

25 112. Plaintiffs and class members are harmed by Google's unauthorized and deceptively
 26 branded Landing Page because, among other reasons, the screen serves to: (i) divert consumers
 27 searching for Plaintiffs' and class members' restaurants into competing businesses, depriving the

1 restaurants of direct customer relationships; (ii) impose higher costs and fees on the restaurants than
 2 what the restaurants would otherwise experience had they obtained orders directly in person, over the
 3 phone, or via the restaurants' own order-taking websites; and (iii) dilute and damage Plaintiffs' and
 4 class members' brands, reputations, and tradenames by associating Plaintiffs and class members with
 5 third party websites and Delivery Providers over whom they do not exert control.

6 **E. Google is Not Licensed to Use Plaintiffs' and Class Members' Tradenames.**

7 113. Google is not licensed by Plaintiffs and class members to use Plaintiffs' and class
 8 members' tradenames in connection with Google's unauthorized and deceptively branded button and
 9 webpages.

10 114. Google never sought, nor obtained, Plaintiffs' and class members' consent to use their
 11 tradenames in connection with Google's button and webpages.

12 115. Rather, at least with respect to its Storefront, Google claims (wrongly) to have a right to
 13 use Plaintiffs' and class members' tradenames because of a purported transfer or delegation of such a
 14 right by and through its relationship with Delivery Providers to whom it passes its illicit orders.¹¹

15 116. But the Delivery Providers are not authorized to create websites branded as the restaurant
 16 outside of the Delivery Providers proprietary platforms; and they do not have rights, in all events, that
 17 can be extended to third parties, such as Google.

18 117. By way of example, Postmates is a Delivery Provider with whom Google contracted to
 19 process at least some of the orders captured by Google's illegal Storefront.

20 118. Upon information and belief, all (or nearly all) of Postmates' restaurants are subjected
 21 to Google's illegal Storefront, amounting to tens of thousands of U.S.-based restaurants.

22

23 ¹¹ See Google Business Profile Help, https://support.google.com/business/answer/10918858?visit_id=637774458410193900-1275963472&hl=en&rd=1 (last visited Jun. 30, 2022), wherein Google
 24 describes its button and Storefront as follows: "You can accept orders through third-party providers
 25 who state they have authorized relationships with your business. These providers can automatically
 26 update and make food ordering available." (emphasis added). See also Sean Captain, *Local food*
27 delivery companies say Google devastated their business, Fast Company (Aug. 10, 2021),
<http://www.fastcompany.com/90658514/google-restaurant-listings-local-delivery-services> (last visited
 28 on Jun. 30, 2022), wherein the author claims, "[A] delivery company can add itself to the ordering links
 in a restaurant's business listing. But Google's program essentially runs on the honor system. A Google
 representative acknowledges that abuses were rampant in the past."

1 119. Postmates reportedly controls 8-10% of the Delivery Provider market within the United
 2 States,¹² operates within approximately 3,000 U.S. cities (as of the beginning of 2019),¹³ and has annual
 3 revenues reportedly approaching \$1 billion (as of 2018).¹⁴ Postmates claims to have relationships with
 4 over 600,000 restaurants and businesses.¹⁵

5 120. Postmates executes a form agreement with its client restaurants, which is updated from
 6 time to time.¹⁶ While the agreement purports to authorize *Postmates* use of its merchant-restaurant's
 7 tradenames within *Postmates'* proprietary mobile app and website, the agreement does not authorize
 8 *Google's* use of the restaurant's tradenames within *Google's* webpages. Moreover, the agreement does
 9 not authorize Postmates to license third parties, such as Google, to sell the restaurant's products and
 10 services or to prominently brand websites as the restaurant. Indeed, Postmates' agreement plainly states
 11 the license grant is "limited," "non-transferable" and that the "[a]greement may not be...delegated or
 12 subcontracted, in whole or part." See Exhibit B, §§ 7 and 19. Thus, Google's conduct is not authorized
 13 by and through its relationship to Postmates.

14 121. At some point after launching its illegal storefront, Google recognized that the Delivery
 15 Providers may not, in fact, have rights to extend to Google, and so it developed and released an "opt-
 16 out" feature, available to restaurants within its "My Business" service (n/k/a "Google Business
 17 Profile"). But the availability of an opt-out feature does not save Google from its wrongful conduct as
 18 complained of herein. First, the opt-out feature only removes the restaurant from the Google's illicit
 19 Storefront, not Google's confusingly branded Landing Page. Second, with respect to the Plaintiffs and
 20 class members subjected to Google's Storefront, the feature is not available to restaurants that are not

21 ¹² Janine Perri, *Which company is winning the restaurant food delivery war?* Bloomberg Second
 22 Measure (Feb. 15, 2022), <https://secondmeasure.com/datapoints/food-delivery-services-grubhub-uber-eats-doordash-postmates/> (last visited Jun. 30, 2022).

23 ¹³ Wikipedia, <https://en.wikipedia.org/wiki/Postmates> (last visited Jun. 30, 2022).

24 ¹⁴ *Id.*

25 ¹⁵ Apple App Store Preview, <https://apps.apple.com/us/app/postmates-food-delivery/id512393983> (last visited Feb. 28, 2022).

26 ¹⁶ Postmates was recently acquired by Uber, so its merchant terms of use is now controlled by
 27 "Uber Eats U.S. Merchant Terms and Conditions," attached as Exhibit B (dated 5/18/22), and located
 28 at: Uber, https://www.uber.com/legal/en/document/?uclink_id=fb04753b-5626-48ed-b7a1-f0a633b5aef3&_ga=2.116279046.1608366540.1643736442-27952752.1641239834&_gac=1.140627462.1643736442.EAIAIQobChMIZdLss4Pf9QIVMQV9Ch1lsARhEAAVASAAEgLFI_D_BwE&country=united-states&lang=en&name=uber-eats-merchant-terms-and-conditions (last visited Jun. 30, 2022).

also users of Google’s “My Business” service. Third, Google cannot convert the silence or inaction of a restaurant/My Business user into assent merely by prescribing the conditions of rejection. Google—like everyone else—must obtain the consent of the tradename owner *prior* to its intended use.

122. Upon information and belief, Plaintiffs' and class members' agreements with other Delivery Providers likewise do not authorize Google to use Plaintiffs' and class members' tradenames in connection with its button, Storefront, or Landing Page. A complete list of Delivery Providers with whom Google has contracted in connection with its Storefront and Landing Page will be ascertained through discovery.¹⁷

V. CLASS ALLEGATIONS

123. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs seek to pursue their claims on behalf of a class of similarly situated persons. The parameters of the class may be refined through discovery and will be subject to Court approval and modification, but for the purposes of this complaint, Plaintiffs propose the following class definitions:

- a. All persons or entities in the United States who own or operate restaurants or businesses in the food service or restaurant industry as to which Google placed an “Order Delivery,” “Order Pickup,” or “Order Online” button under the restaurant’s or business’s tradename on Google’s search results page or Google’s maps page, and captured customer orders through Google’s Storefront under the restaurant’s or business’s tradename.
- b. All such persons or entities identified in subpart (a) (above) and whose names are registered with the Principal Register, as maintained by the United States Patent and Trademark Office.
- c. All persons or entities in the United States who own or operate restaurants or businesses in the food service or restaurant industry as to which Google placed an “Order Delivery,” “Order Pickup,” or “Order Online” button under the restaurant’s or business’s tradename on Google’s search results page or Google’s maps page, and presented users with Google’s Landing Page.
- d. All such persons or entities identified in subpart (c) (above) and whose names are registered with the Principal Register, as maintained by the United States Patent and Trademark Office.

¹⁷ Significantly, upon information and belief, at least three of the largest Delivery Providers operating within the United States – DoorDash, Grubhub, and Uber Eats (separate and apart from its recently acquired subsidiary, Postmates) – do not participate in Google’s Storefront (Scenario One), and have never processed orders originating from the Storefront. Upon information and belief, these Delivery Providers refuse to participate in Google’s Storefront because they recognize it uses Plaintiffs’ and class members’ tradenames illegally.

1 124. Plaintiffs further propose that the following persons be excluded from any certified class:
 2 (i) Google, its current or former officers, directors, management, employees, subsidiaries, and affiliates;
 3 and (ii) all judicial officers and associated court staff assigned to this and their immediate family
 4 members.

5 125. Plaintiffs reserve the right to amend the class definition if further investigation,
 6 discovery, or both indicate that such definitions should be narrowed, expanded, or otherwise modified.

7 126. The proposed class meets the requirements for class certification pursuant to Federal
 8 Rule 23(a) and (b).

9 127. *Numerosity:* The members of the class are so numerous that joinder of all members is
 10 impracticable. The precise number of restaurants subject to Google's unauthorized button, and
 11 webpages as alleged herein are unknown at this time, but it is believed to be in the tens of thousands.
 12 Upon information and belief, Google has subjected most (and perhaps every) restaurant that has a
 13 relationship with the Delivery Provider Postmates, to its unauthorized button and Storefront. Postmates
 14 alone has relationships with hundreds of thousands of restaurants within the United States. Additionally,
 15 upon information and belief, Google has subjected nearly every restaurant in the country to its
 16 unauthorized button and Landing Page, amounting to many hundreds of thousands of class members.

17 128. *Commonality:* Common questions of law and fact exist as to all members of the class
 18 and predominate over any questions solely affecting individual members. Such common issues include:

- 19 a. Whether Google's actions as alleged herein constitute infringement under 15 U.S.C.
 20 § 1114, and in particular, use of a counterfeit mark, for those class members that
 21 have registered marks on the Principal Register;
- 22 b. Whether Google's actions as alleged herein constitute false association, false
 23 advertising, or unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C.
 24 § 1125(a) for all class members, whether or not their names are registered on the
 25 Principal Register;
- 26 c. Whether Google's use of the Plaintiffs' and class members' tradenames in
 27 connection with its unauthorized button and webpages is likely to cause consumer
 28 confusion or deceive as required under the statute;

1 d. Whether the Plaintiffs and class members are entitled to declaratory and/or injunctive
 2 relief to rectify the alleged violations of law; and, if so, what is the appropriate nature
 3 of the equitable and injunctive relief to which the Plaintiffs and class members may
 4 be entitled;

5 e. Whether Google's conduct caused the Plaintiffs' and class members' damage; and if
 6 so, the extent of such damage;

7 f. Whether Google derived profit from its conduct; and if so how much profit it derived;
 8 and

9 g. The appropriate measure of monetary relief to be awarded Plaintiffs and class
 10 members under 15 U.S.C. § 1117(a), (b), and (c) including specifically in relation
 11 to: Google's profits, Plaintiffs' and class members' actual damages, enhancements
 12 and treble damages relating to the foregoing, and costs and attorneys' fees.
 13 Additionally, to the extent Plaintiffs elect statutory damages for use of counterfeit
 14 marks in connection with those class members with names registered on the Principal
 15 Register, the amount of damages that the court considers just within the statutorily
 16 prescribed range.

17 h. Whether or not, Plaintiffs and members are entitled to injunctive relief under 15
 18 U.S.C. § 1116.

19 129. *Typicality:* Plaintiffs' claims are typical of the claims of other members of the class in
 20 that Plaintiffs and the members of the class sustained damages arising out of Google's uniform (and
 21 programmatic) deceptive conduct and use of Plaintiffs' and class members' tradenames and goodwill
 22 without authorization.

23 130. *Adequacy:* Plaintiffs will fairly and adequately represent and protect the interests of the
 24 class, and have retained counsel competent and experienced in complex litigation, trademark disputes,
 25 and class actions. Plaintiffs have no interest antagonistic to those of the class, and Google has no
 26 defenses unique to Plaintiffs.

27 131. *Predominance:* The common questions identified above are likely to predominate at trial
 28 when compared to any individualized issues that may arise. Moreover, the major issue upon which

1 Google’s liability will depend—in particular, whether Google’s use of Plaintiffs’ and class members’
2 tradenames in connection with Google’s unauthorized and deceptive button, and webpages is likely to
3 cause consumer confusion and/or deception—is susceptible to generalized proof since the alleged
4 conduct across the class is consistent and programmatic.

5 132. *Policies Generally Applicable to the Class:* This class action is appropriate for
6 certification because Google has acted or refused to act on grounds generally applicable to the class as
7 a whole, thereby requiring the Court’s imposition of uniform relief to ensure compatible standards of
8 conduct toward the members of the class, and making final injunctive relief appropriate with respect to
9 the class as a whole. Google’s practices challenged herein apply to and affect the members of the class
10 uniformly, and Plaintiffs’ challenges of those practices hinges on Google’s conduct with respect to the
11 class as a whole, not on facts or law applicable only to Plaintiffs.

12 133. *Superiority*: This case is also appropriate for class certification because class
13 proceedings are superior to all other available methods for the fair and efficient adjudication of this
14 controversy and because joinder of all parties is impracticable. The damages suffered by the individual
15 members of the class will likely be relatively small, especially given the burden and expense of the
16 individual prosecution of the complex litigation necessitated by Google’s actions. Thus, it would be
17 virtually impossible for the individual members of the class to obtain effective relief from Google’s
18 misconduct. Even if members of the class could sustain such individual litigation, it would still not be
19 preferable to a class action, because individual litigation would increase the delay and expense to all
20 parties due to the complex legal and factual controversies presented in this complaint. By contrast, a
21 class action presents far fewer management difficulties and provides the benefits of a single
22 adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time,
23 effort, and expense will be fostered and uniformity of decisions ensured.

VI. CLAIM FOR RELIEF

Trademark Infringement and Counterfeiting

26 134. Plaintiffs incorporate the allegations above as if set forth fully herein.

27 135. Google's conduct violates 15 U.S.C. § 1114, which provides, in relevant part, "any
28 person who shall, without the consent of the registrant-- (a) use[s] in commerce any reproduction,

1 counterfeit, copy or colorable imitation of a registered mark in connection with the sale, offering for
 2 sale, distribution, or advertising of any goods or services on or in connection with such use is likely to
 3 cause confusion, or to cause mistake, or to deceive...shall be liable in civil action by the registrant for
 4 the remedies hereinafter provided." 15 U.S.C. § 1114. The code further defines a "counterfeit" mark as
 5 a "spurious mark which is identical with, or substantially indistinguishable from, a registered mark." 15
 6 U.S.C. § 1127.

7 136. Many class members hold registrations within the Principal Register, giving constructive
 8 notice to Google of these class members' ownership rights to their tradenames.

9 137. The class members with registered marks use them to promote their own restaurants,
 10 products and related food ordering capabilities, including in many cases their own food ordering
 11 websites and telephone numbers.

12 138. Defendant intentionally and knowingly copied the registered marks of class members
 13 and used the same in connection with its button and competing, unauthorized, webpages for the purpose
 14 of selling unauthorized, unlicensed, product and services to consumers.

15 139. Defendant did not and failed to obtain the consent of the class members with registered
 16 marks to use their names in connection with its unauthorized button and webpages.

17 140. As a direct and proximate result of Google's direct copying and use of the class
 18 members' registered tradenames, class members suffered pecuniary injury.

19 141. As a direct and proximate result of Google's direct copying and use of the class
 20 members' registered tradenames, Google profited.

21 142. Under 15 U.S.C. § 1117(a), class members with registered marks are entitled to Google's
 22 profits, actual damages, costs of the suit, and attorneys' fees.

23 143. Under 15 U.S.C. § 1117(b), class members with registered marks are entitled to treble
 24 damages.

25 144. Under 15 U.S.C. § 1117(c), class members with registered marks are entitled statutory
 26 damages, at their option, of not less than \$1,000 or more than \$200,000 per class member, as the court
 27 considers just; or if the court finds that the use of the counterfeit mark was willful, up to \$2,000,000 per
 28 class member.

145. Under 15 U.S.C. § 1116, Plaintiffs and class members also seek injunctive relief prohibiting Google from using Plaintiffs' and class members' tradenames in connection with its unauthorized and deceptive "Order Online" button, Storefront, and Landing Page as described herein, and requiring Google to take appropriate affirmative steps to undo and prevent consumer confusion.

Violations of Lanham Act – Section 43(a)

146. Plaintiffs incorporate the allegations above as if set forth fully herein.

147. Google's conduct violates Section 43(a) of the Lanham Act, which prohibits the use "in commerce [of] any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which – (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities." Additionally, the act permits such an action to be maintained by "any person who believes that he or she is or is likely to be damaged..."

148. Google's unauthorized and deceptive use of Plaintiffs' and class members' tradenames, as described herein, and specifically in relation to Google's unauthorized and deceptive button and webpages are uses in commerce in connection with offered goods, services, and commercial activities.

149. Google's unauthorized and deceptive use of Plaintiffs' and class members' tradenames, as alleged herein, are likely to, and in fact do, cause consumer confusion, including by causing consumers to believe that: (i) Google's button; (ii) Google's webpages; and (iii) the goods, services and commercial activities offered within the websites are all affiliated, connected, associated, sponsored or approved by Plaintiffs and class members, when they are not. Additionally, Google's unauthorized and deceptive use of Plaintiffs' and class members' tradenames, as alleged herein, is also a false representation, made in an advertisement and promotion, concerning the nature, characteristics, and qualities of: (i) Google's button; (ii) Google's webpages; and (iii) the goods, services, and commercial activities made available within the websites.

150. Internet users searching for Plaintiffs' or class members' tradenames, and who are
 2 thereafter presented with Google's "Order Online" button under the Plaintiffs' and class members'
 3 tradenames; and whereupon clicking the button are presented with the Online Storefront and/or Landing
 4 Page, under Plaintiffs' and class members' tradenames, have a reasonable expectation that such button,
 5 websites, and the goods, services, and commercial activities offered within those websites are all
 6 affiliated, connected, associated, sponsored or approved by the Plaintiffs and/or class members.

151. The button, websites, and the goods, services, and commercial activities offered within
 2 the websites are in fact not affiliated, connected, associated, sponsored or approved by Plaintiffs and
 3 class members.

152. As a direct and proximate result of Google's unauthorized and deceptive use of
 1 Plaintiffs' and class members' tradenames, Plaintiffs and class members have suffered pecuniary injury.

153. As a direct and proximate result of Google's unauthorized and deceptive use of
 1 Plaintiffs' and class members' tradenames, Google has profited.

154. Under 15 U.S.C. § 1117(a), Plaintiffs and class members are entitled to disgorgement of
 1 Google's profits, actual damages, costs of the suit, and attorneys' fees.

155. Under 15 U.S.C. § 1117(a), Plaintiffs and class members are entitled to enhanced
 1 damages, up to three times actual damages, because, among other reasons, Google's conduct was
 18 deliberate and willful.

156. Under 15 U.S.C. § 1116, Plaintiffs and class members also seek injunctive relief
 20 prohibiting Google from using Plaintiffs' and class members' tradenames in connection with its
 21 unauthorized and deceptive "Order Online" button, Storefront, and Landing Page as described herein,
 22 and requiring Google to take appropriate affirmative steps to undo and prevent consumer confusion.

23 **VII. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs, individually, and on behalf of the class members, respectfully request
 25 that this Court enter judgment as follows:

- 26 a. The Court determine that this action may be maintained as a class action pursuant to
 27 Rule 23 of the Federal Rules of Civil Procedure;
- 28 b. For class members with registered marks:

- 1 i. An award of monetary relief according to the proof, including Plaintiffs' and
2 class members' damages and Google's profits, trebled due to Defendant's
3 use of a counterfeit mark; or alternatively (and assuming Plaintiffs so elect),
4 statutory damages in an amount determined to be just and within the range
5 prescribed by statute between \$1,000 and \$200,000, and up to \$2,000,000 (if
6 willful) per class member;
- 7 c. For class members with unregistered marks:
 - 8 i. An award of monetary relief according to the proof, including Plaintiffs' and
9 class members' damages and Google's profits, enhanced as appropriate up to
10 three times actual damages;
 - 11 d. Injunctive and equitable relief;
 - 12 e. Pre- and post-judgment interest, as provided by law;
 - 13 f. Attorneys' fees and costs, including expert fees and costs; and
 - 14 g. Any such further relief as the Court may deem just and proper.

1 **VIII. DEMAND FOR JURY TRIAL**

2 Plaintiffs, on behalf of themselves and the class members, pursuant to Rule 38 of the Federal
3 Rules of Civil Procedure, request a trial by jury on all claims so triable by right.

4 Dated: June 30, 2022

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